



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1997

Ms. Cynthia F. Calhoun
The Ronquillo Law Firm
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR97-2472

Dear Ms. Calhoun:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110288.

The Dallas Independent School District (the "district") received a request for the following information:

1. All board policies and/or school district practices pertaining to evaluations of school professional employees;
2. All evaluations done of Dr. Joe McCalister done since the 1990/91 school year;
3. All records, memoranda and other written materials reflecting the reasons why Dr. Joe McCalister was transferred from Silberstein Elementary to Titche Elementary;
4. All records, memoranda and other written materials reflecting the name and reasons for transfer of all employees (paraprofessional and professional) who have been transferred from Titche (voluntary or not) since the 1990/91 school year.

You claim that the requested information is excepted from disclosure under sections 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information,

and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, in your original correspondence submit to this office copies or representative samples of the specific information that was requested. Nor did you claim any specific exception to disclosure except for the evaluation information.

Pursuant to section 552.303(c) of the Government Code, this office notified you via facsimile dated September 11, 1997, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public. The fact that submitting copies for review to the Attorney General may be burdensome does not relieve a governmental body of the responsibility of doing so. Open Records Decision No. 497 (1988).

In response to our notification, by letter dated, September 18, 1997, you submitted to this office a representative sample of Dr. McCalister's evaluations.¹ As of the date of this letter, you have not provided our office with any other information. Therefore, we presume that you have released all other requested information that is not otherwise confidential by law. Gov't Code § 552.301(a); *see* Gov't Code § 552.352 (distribution of confidential information is criminal offense). This remaining information for which you do not seek a decision is presumed to be public as provided by section 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

As for Dr. McCalister's evaluations, we note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and is teaching at the time of his or her evaluation. *Id.* at 4. We also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* The term teacher or administrator does not include teacher interns, teacher trainees, librarians, educational aides or counselors. *Id.* at 5. Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the submitted evaluations are confidential under section 21.355 of the Education Code. The district must release the remaining documents that are not confidential by law.

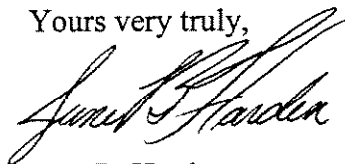
You also argue that the request for information in categories 1 and 4 is overly broad and vague. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the district must make a good-faith effort to relate the request to information in the district's possession and must help the requestor to clarify his request by advising him of the types of information available. Thus, if the responsive documents exist, they must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/alg

Ref.: ID# 110288

Enclosures: Submitted documents

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(w/o enclosures)